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FILED
JAN 22 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-861

# In the Supreme Court of the United States

HULDA SHURTLEFF, Personal Representative of the Estate of ROBERT SHURTLEFF, Deceased, and Assignee of the Estate of CLAIRE G. JUNE, Deceased,
*Petitioner*,

v.

GREAT AMERICAN INSURANCE COMPANY, a Foreign Corporation, and OHIO CASUALTY INSURANCE COMPANY,
*Respondents*.

**On Petition for a Writ of Certiorari to the Supreme Court of the State of Iowa**

## BRIEF IN OPPOSITION

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## COUNTER-STATEMENT OF QUESTIONS PRESENTED

The issue decided by the Iowa Court of Appeals was how the term "non-owned automobile" was to be interpreted in the context of Respondent's policy of insurance. The court did not make a finding of fact as to whether the vehicle was a hired vehicle but merely concluded that since the vehicle was owned by Claire June (Petitioner's claimed omnibus insured) and was a "non-owned automobile" as that term was interpreted by the Iowa court (not owned by the National Farmers Organization (NFO), the named insured), Claire June, as the owner of said "non-owned" vehicle, was precluded from coverage. While not necessary to its opinion, the court did make a statement to the effect that whether the vehicle was considered "hired" or "non-owned", Claire June, as the owner of the vehicle, was not covered under Respondent's policy. Petitioner concedes that the vehicle was owned by Claire June. It would then follow, according to the interpretation assigned by the court to the term "non-owned vehicle", Claire June as the owner of the vehicle was not covered under the policy. The issues presented are:

1. **DOES THE SUPREME COURT HAVE JURISDICTION; WAS THE IOWA COURT'S OPINION FOUNDED ON A FAILURE TO GIVE FULL FAITH AND CREDIT TO A MICHIGAN JURY VERDICT AND WAS the ISSUE PROPERLY PRESENTED TO THE IOWA COURT?**

2. **ASSUMING, WITHOUT CONCEDING, THAT THIS HONORABLE COURT HAS JURISDICTION, DOES THE PETITION SEEKING REVIEW OF AN UNPUBLISHED**

INTERMEDIATE STATE COURT OF APPEALS OPINION PRESENT SPECIAL AND IMPORTANT REASONS NECESSARY TO MOVE THE COURT'S DISCRETION?

3. IF THIS COURT WERE TO GRANT CERTIORARI AND ULTIMATELY REMAND THE CASE TO THE IOWA COURT DIRECTING THE IOWA COURT TO ADDRESS THE FULL FAITH AND CREDIT ISSUE, WOULD A DIFFERENT RESULT BE OBTAINED?

## PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

There are no parties to the proceedings other than those listed in the caption.

Respondent, Great American Insurance Company's parent company is American Financial Corporation which holds 100% of the stock of Great American Insurance Company. Ohio Casualty Company is an Ohio corporation whose shares are publicly traded and it is not a subsidiary of any other corporation. The only relationship between the two respondents is that a portion of Great American's business, which may or may not include the policy in question, was ceded to Ohio Casualty Insurance Company.

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## OPINIONS AND ORDER BELOW

Petitioner seeks relief with reference to the Opinion of Iowa Court of Appeals, Shurtleff v. Great American Insurance Co. et al (No. 6-290/04-1093, released 6/28/06) (Cert. Petition App. B). Further, so that the Court of Appeals Opinion may be read in context with the trial court opinion which was under review by the Iowa Court of Appeals, the ruling of the trial court on cross motions for summary disposition is attached (Cert. Petition App. C). The Order of the Supreme Court denying further review is attached (Cert. Petition App. A).

## SUPREME COURT LACKS JURISDICTION

The decision of the Iowa court did not turn on nor does it present a federal question as framed by the language of 28 USC § 1257. The issue decided by the Iowa court was the interpretation of the term "non-owned automobile" as employed in Respondent's contract of insurance. The Iowa court determined that the term "non-owned automobile" meant a vehicle not owned by the named insured (the NFO). The court went on to conclude that whether the vehicle was "hired" or, as the court construed the term, it was "non-owned", Mr. June was not an insured because as the owner of the subject matter automobile, he came within the exception to the extension of coverage. Ergo, since the subject matter vehicle was not owned by the NFO (hence a "non-owned automobile" as defined by the Iowa court) and Mr. June in fact owned the vehicle, no coverage was afforded to Mr. June under the terms of the policy. The court ventured that it would not matter whether the vehicle was "hired" or "non-owned", Mr. June was not afforded coverage.

Petitioner concedes that Claire June was the owner of the subject matter vehicle. Hence, the issue before the court with reference to III.(e) of Respondent's policy of insurance (the provision upon which the Iowa Court of Appeals ruled) was the meaning of the term "non-owned automobile". Once the court determined that the trial court was in error in finding the term ambiguous and in fact applied a definition to the term, then as the court ventured, it did not matter whether the vehicle was a "hired" vehicle (we submit it was not) or whether it was a "non-owned automobile" as the court now defined that term (it was), Mr. June, as the owner, was not entitled to coverage.

The Iowa Court of Appeals was not presented with a full faith and credit issue as no constitutional issue was "specially set up or claimed" nor was the Iowa court given an opportunity to pass upon the same. Hence, Petitioner has not brought this matter within the Court's jurisdiction as provided by 28 USC § 1257. The full faith and credit issue was not necessary to the opinion but had the issue been required to be presented to the Iowa court, the Iowa court in giving full faith and credit to the verdict form would not only give full faith and credit to the finding that the vehicle was not "hired" by the NFO but would also have to give full faith and credit to that portion of the Michigan verdict stating that the NFO did not own the subject matter vehicle. It would then follow that the vehicle would be a "non-owned automobile" as per the court's definition and hence Mr. June as the owner of the same would be precluded from coverage consistent with the Iowa Court of Appeals findings.

Petitioner does not present a federal question or claim nor was Petitioner's alleged federal claim "addressed by, or properly presented to, the state court that rendered the decision" and hence the Petition does not come within 28

USC § 1257 and the requirements of this Honorable Court as set forth in *Adams v. Robertson*, 520 U.S. 83, 117 S.Ct. 1028, 137 L.Ed. 2d 203 (1997); *McGoldrick v. Compangnie Generale Transatlantique*, 309 U.S. 430, 434, 60 S.Ct. 670, 84 L.Ed. 849 (1940).

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Respondent disagrees with Petitioner's assertion that the constitutional provision relied upon by Petitioner is in fact involved nor, for the reasons set forth above, does Respondent believe that Petitioner has brought this Petition within the provisions of 28 USC § 1257. Petitioner's reference to 28 USC § 1738 is likewise inapplicable as there has been no showing of the attestation and/or authentication as required by the statute. In short, this case simply involves an issue of contract interpretation.

## STATEMENT OF THE CASE

Respondent agrees that Claire June was the principal stockholder of June's Trucking (his wife also held stock). We also agree that Claire June owned the subject matter truck which was used in the business of June's Trucking to carry out its contract with the local NFO member farmers to deliver their milk to a dairy. Claire June, in addition to his role as an independent hauler, was also a member of the NFO not because he was a hauler but because he had an operating farm. He, along with thousands of other members are by statute considered shareholders and although they were not contemplated to be considered shareholders under the policy, Respondent does concede that Claire June, by virtue of his membership in the NFO, was in fact a stockholder.

Respondent's named insured in the policy at issue was the NFO, an agricultural cooperative with members throughout the United States which collectively bargains in behalf of its members to obtain an appropriate price for their farm products. The farmers themselves and/or the NFO arrange to have the product delivered in large part by employing independent contractor haulers. Some of these haulers may in some cases be members of the NFO but these are two separate roles because members are not required to haul and haulers cannot become members merely by their status as haulers.

As indicated, Claire June qualified to be a member of the NFO as the owner and operator of a working farm. Unconnected with his membership, he also was the principle owner of the stock in June's Trucking and in effect operated June's Trucking which, in fact, hauled the product of NFO member farmers. The truck involved in the accident was owned by Claire June but was used exclusively in the business of June's Trucking. June's Trucking was insured by Michigan Mutual Insurance Company and Claire June, as the owner of a vehicle scheduled on the Michigan Mutual policy, was insured by Michigan Mutual and in fact was defended in the Michigan action by Michigan Mutual and indeed, Michigan Mutual paid its policy limits plus interest upon conclusion of the Michigan actions.

## A. THE ACCIDENT GIVING RISE TO THE INITIAL MICHIGAN TORT CLAIM AND THE INITIAL MICHIGAN TORT LITIGATION AND THE PARTIES THERETO.

Petitioner is and her decedent was a Michigan resident and the subject matter accident occurred in Michigan. Within a few months after the accident, Petitioner brought suit in

Michigan alleging that Claire June was the owner of the vehicle and responsible for maintenance and improperly maintained the vehicle. Suit was also brought against Richard June, the operator of the vehicle and an employee of June's Trucking. The claim against June's Trucking was basically for the vicarious liability for its employee, Richard June. All of the Junes were Michigan residents and the vehicle was insured under June's Trucking's Michigan Mutual policy as a designated vehicle and Claire June was an additional insured under said policy. Michigan Mutual defended all of the June defendants and paid their policy limits ultimately.

In addition to the above-referenced June defendants, the NFO was named as a defendant, alleging certain claimed independent acts of negligence as well as a theory of respondeat superior. The case went to trial and a judgment was obtained against the Junes only, the jury concluding that the NFO committed no independent acts of negligence nor was it liable as the Junes were in fact independent contractors and not agents or employees of the NFO.

On appeal, the Michigan Court of Appeals affirmed as to the NFO but reversed because of an instructional error as to damages and remanded the case for a new trial on damages only as to the June defendants. Throughout, the Junes were defended by Michigan Mutual under its truckers' policy and, in fact, Michigan Mutual paid its policy limits plus interest.

On retrial, Petitioner obtained a more favorable judgment against Claire June and the other June defendants.

**B. THE MICHIGAN GARNISHMENT ACTION**

Upon having obtained the second judgment against Claire June, Petitioner garnisheed the various NFO carriers

including Respondent, claiming that Claire June was an additional insured under the NFO policies of insurance. Respondent's policy language relied upon by Petitioner in salient part provided:

> "III. **Definition of Named Insured and Insured:** The unqualified word 'insured' includes the named insured and also: . . .
>
> (d) With respect to automobiles, any person while using any automobile owned by or hired for use by or on behalf of the named insured . . . provided the use is within the scope of permission granted by the named insured **and any officer, director, stockholder or partner, of the named insured while using any automobile not owned by the named insured while such automobile is being used in the business of the named insured**". (Emphasis supplied)

III.(d) quoted above was qualified by III.(e) which again in salient part provided:

> (e) Except as respects the named insured, none of the following shall be an insured under paragraph (d)
>
> . . . .
>
> (2) The **owner** or **lessor** of a **hired or non-owned automobile**, . . .

Petitioner had a plethora of theories in the Michigan garnishment action, claiming that the vehicle was "owned" or

"hired" by the NFO and Petitioner also made the same claim as subsequently brought before the Iowa court, i.e., that Mr. June, as a member of the NFO, had shareholder status and that he was operating the vehicle in the course of his duties with the NFO and hence was an insured under the policy. The garnishment action went to trial on all of the issues except for an issue of estoppel which was to be tried at the conclusion of the trial as to all other issues if it were still necessary. At the conclusion of proofs, the Michigan judge directed a verdict in favor of these Respondents on the stockholder/member issue presented to the Iowa court, holding that III.(d) did not apply and in any event any such coverage would be excluded by III.(e) because Claire June was the owner of the vehicle. See Iowa trial Court's ruling (Cert. Petition App. C at p. 15A).

The only issues that went to the jury was whether or not, under the instructions given by the court, the vehicle was "hired" or "owned" by the NFO and a jury determined that the NFO neither owned nor hired the vehicle. Instead of seeking to proceed with the second trial on the estoppel issue which had been expressly preserved, Plaintiff agreed to dismiss the entire case; all claims were dismissed with prejudice with the exception of the reserved estoppel issue and the withdrawn issue of "stockholder/member" which two claims were dismissed without prejudice. While the estoppel issue had been preserved for a trial to follow the initial garnishment trial, the same could not be said of the "stockholder/member" issue. It had been Respondent's position that a judgment is res judicata, under Michigan law, as to all issues which were raised or which could have been raised, the mere fact that Petitioner withdrew an issue which in fact had been raised and ruled upon required the application of the doctrine of res judicata should a second lawsuit be commenced on that issue. A dismissal without

prejudice, according to Respondent's position, was as if the case had never been commenced and the issue had never been raised. However, the Iowa Court of Appeals did not rule on that issue.

## C. THE IOWA PROCEEDINGS BELOW

Not having succeeded in Michigan, Petitioner brought an action in Iowa and survived Respondent's forum non conveniens motion. The Iowa trial court judge subsequently ruled that Michigan law applied to the interpretation of the policy and the effect of the Michigan judgment. Thereafter, cross-motions for summary disposition were filed and the trial judge denied Petitioner's motion for summary disposition and granted Respondent's motion and found that plaintiff had not brought Claire June within the general description of an insured in III.(d).

The trial court further volunteered that III.(e), the exception to III.(d), was inapplicable because the term "non-owned automobile" was found to be ambiguous. However, a discussion of III.(e) was unnecessary because if III.(d) did not extend coverage to Claire June (as the trial court found), there was no need to go to III.(e) which acts as an exception to III.(d); there is no need to make an exception for that which is not included.

Petitioner appealed the trial court's ruling as to III.(d), claiming that Claire June came within the wording of III.(d). Respondent cross appealed seeking to overturn the trial court's holding that the term "non-owned automobile" was ambiguous. Respondent argued that when the term "non-owned automobile" as employed in III.(e) was viewed in context with the extension of coverage under III.(d), the reference to a "non-owned automobile" in III.(e) had to be a

reference to an automobile "not owned by the named insured" referred to in III.(d). It would then follow that since Mr. June owned the subject matter vehicle which met the definition of a "non-owned automobile", Mr. June would be excepted from any coverage which might have been extended under III.(d).

The Iowa Supreme Court remanded the case to the Iowa Court of Appeals and the Iowa Court of Appeals affirmed the district court. However, in so doing, it rested its opinion on the fact that when (d) and (e) were read together, the term "non-owned automobile" was not ambiguous. The term applied to preclude coverage to an owner (Claire June) of a vehicle "not owned by the NFO"; the "owner . . . of a . . . non-owned automobile" as referred to in III.(e)(2) which acted as an exception to the grant of coverage found in III.(d). Hence, the "non-owned automobile" in III.(e) was in fact the automobile "not owned by the named insured" referred to in III.(d). The very Michigan finding which Petitioner relies upon now reflecting a jury's determination that the subject matter vehicle was not "hired" by the NFO reflected further that the vehicle was not "owned" by the NFO. Hence, to the extent that Mr. June might have been extended coverage under III.(d) in operating a vehicle which was not owned by the NFO in the course of the NFO's business (which would have been contrary to the trial court's ruling and was not addressed by the Court of Appeals), he would be excluded from coverage under III.(e) as the owner of the "non-owned" vehicle; the vehicle not owned by the named insured (NFO) as the language was interpreted by the Iowa Court of Appeals. The trial court had indicated in its opinion that Claire June was the owner of the vehicle and that issue was conceded by Petitioner at the trial level and has now again been conceded in her Petition at page 3 thereof.

Contrary to Petitioner's concluding paragraph in her Statement of the Case, the Michigan garnishment action not only found that the truck was not hired by the NFO but also that it was not owned by the NFO (hence a non-owned automobile per the Iowa Court of Appeals). The Iowa Court of Appeals opinion found that the truck as per III.(e) of the policy was a "non-owned automobile" and that that term was not ambiguous. The Iowa court then went on to state that it did not matter whether the vehicle was "hired" or "not owned by the NFO", no coverage was afforded to Mr. June because he was the owner of the vehicle. After all, if the vehicle was neither hired by the NFO nor "not owned by the NFO", no coverage could be extended under III.(d) to begin with but if it was "hired" or "non-owned by the NFO", provided that other threshold requirements were met, then one could be an additional insured as long as he or she was not the owner of the vehicle. So, for example, if a member/stockholder had to go to another city to act in behalf of the NFO and had to rent a vehicle in order to conduct that business, he would have coverage. However, if the owner of that rented vehicle fortuitously happened to be a member of the NFO and was hired to drive the visiting member, he would not have coverage.

## REASONS FOR DENYING PETITION

### A. NO FEDERAL QUESTION WAS PRESENTED BELOW TO INVOKE THIS COURT'S JURISDICTION

The grant of certiorari under Title 28, § 1257 is discretionary; the statute provides the jurisdictional framework within which the court **may** choose to review cases. The court's discretion is confirmed in Supreme Court Rule 10, which provides "**review on a writ of certiorari is**

**not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons."** (Emphasis supplied). Rule 10 then provides for certain considerations that the court might employ, including (b) (the decision with reference to an important federal question by a state court that conflicts with either another state court or a decision of the United States Court of Appeals) and (c) (a decision of a state court on an important question of federal law that has not been, but should be, settled by the Supreme Court or which is in conflict with a decision of the Supreme Court).

Here, the Iowa court was not presented with a full faith and credit issue nor was its opinion premised on a finding inconsistent with the Michigan verdict. Mr. June owned the vehicle as conceded by Petitioner and as found by the Iowa trial court and Mr. June's ownership was not placed in issue on appeal by Petitioner. The Iowa court, in reading paragraphs III.(d) and III.(e) together and in context as required, determined that the "non-owned automobile" referred to in III.(e) (excluding coverage to owners of a "non-owned automobile") was the vehicle which was "not owned by the named insured" referred to in the extension of coverage in III.(d). It was not necessary to the opinion to find that the vehicle was "hired" nor was it a specific finding by the Iowa Court of Appeals; the Iowa Court of Appeals merely opined that it did not matter whether the vehicle was "hired" or "not owned by" the NFO because in either event Mr. June, as the owner, was not entitled to coverage. Certainly the very Michigan verdict upon which Petitioner relies for a determination that the vehicle was not "hired" likewise reflects the jury's finding that the subject matter automobile was "not owned" by the NFO. It would purely be a matter of state law, then, to conclude, under the definition of "non-

owned automobile" as found the Iowa court, that Mr. June as the owner of the vehicle was not entitled to coverage.

Petitioner attempts to create a constitutional issue where none really exists and those attempts should avail Petitioner naught.

Had Petitioner wanted to present a full faith and credit issue to the Iowa court, Petitioner could have done so by following the mandate of 28 USC § 1738 and presenting an appropriately attested and/or authenticated document (which to date Petitioner has not done) and should have set up said issue or claimed such right as required under 28 USC § 1257(a). Had Petitioner done so, it would have given the Iowa court an opportunity to rule upon the same. The Iowa court, however, did rule and reached a result on grounds which do not invoke any constitutional rights or requirements. The Iowa Court of Appeals opinion rests on adequate state grounds and no federal question has been raised. *Black v. Cutter Laboratories*, 351 U.S. 292, 100 L.Ed. 1188, 76 S.Ct. 824 (1956); *Adams, supra.*

**B. ASSUMING THE COURT HAS JURISDICTION, SHOULD THE COURT EXERCISE ITS DISCRETION IN FAVOR OF GRANTING THE PETITION.**

Petitioner does not present a "compelling" case for review by this Court. Petitioner presents one episode where the Iowa court, not having been presented with a full faith and credit issue, decided a case basically on state law but which Petitioner would now twist into a constitutional question. We would concede that Petitioner's claim is of import to her; the case has been kept alive for better than 20 years and more than a million and a half dollars has already been paid out to

claimants, including Petitioner. Granted, Petitioner has not been fully compensated if the measure of compensation is the Michigan jury verdict and the Michigan tort action. However, while this case is of import to the parties, it involves the interpretation of a policy of insurance which is more than 22 years old, the language of which has gone through a number of changes and there is no real disagreement as to the requirements of Article IV and 28 USC §§ 1257 and 1738. However, the constitutional provision and the subject matter statute were not brought to the attention of the court, ruled upon by the Iowa court, nor would the result have changed if in fact the issue had been properly presented. The Iowa court's interpretation and conclusions were based upon purely state law, interpretation of contracts and facts not inconsistent with the prior Michigan ruling.

Moreover, the Petition does not present a substantial question of constitutional law that has not been previously reviewed by this Court nor does it present any conflicts between various jurisdictions. At best, it raises an isolated claim of a federal question which was not really passed upon by the Iowa court or necessary to the Iowa court's decision. The Court should therefore deny Petitioner's petition because the case does not qualify for or otherwise merit review in this Court.

### C. IF THE COURT WERE TO GRANT CERTIORARI AND IF PETITIONER WERE TO OBTAIN ALL OF THE RELIEF WHICH IT WILL ULTIMATELY REQUEST FROM THIS COURT, THE RESULT UPON REMAND WOULD NOT BE CHANGED.

As indicated previously, the full faith and credit issue was not raised in the proceedings below notwithstanding the fact

that apparently the Michigan finding, according to Petitioner now, was of import. This Court should decline to address issues that were not raised below nor addressed by the state court. *Howell v. Mississippi*, 543 U.S. 440, 160 L.Ed.2d 873, 125 S.Ct. 856 (2005).

Additionally, even if this Court were to find that it had jurisdiction and granted the petition, the result in the state court would not change on remand. Mr. June, as the owner of a "non-owned" automobile (as that term was defined by the Iowa court and which definition does not present a federal question), would not be entitled to coverage. Petitioner concedes Mr. June's ownership and if the Iowa Court of Appeals definition of "non-owned automobile" is applied, Mr. June is not entitled to coverage. Under those circumstances, it is difficult to say that the Petition sets forth any compelling or important reasons for invoking this Court's jurisdiction.

## CONCLUSIONS

Petitioner has managed to continuously litigate this case for over 20 years through creative lawyering and a willingness to stand on both sides of an issue, i.e., a claim that the vehicle was "hired" for purposes of the Michigan garnishment action and now taking great offense at a claimed "finding" by the Iowa court that the vehicle was "hired". In fact, no such determination was made by the Iowa court or necessary to the Iowa court's opinion. For the reasons stated, Respondent respectfully requests that this Court deny the petition and decline to remand the case for further review.

Respectfully submitted,

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Dated: January 22, 2007